IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 3176 of 2007(C)

PETITIONER: PETITIONERS

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1. DR. JOSE THOMAS,
   PUTHIRIKKAL HOUSE, ELAMAKKARA P.O.,
   ASHOKA ROAD, KOCHI - 682 026.

2. DR. VIVEK NARAYAN,
   28/3354, "VRINDHAVAN",
   CHERUPUSHPAM LANE, KADAVANTHRA,
   KOCHI - 20.

3. DR. SAMEERA G.NATH, 20/1312 -
   "KRISHNEEYAM", THIRUVANOOR ROAD,
   PANNIYANKARA, KALLAI POST,
   CALICUT - 673 003.

4. DR. R.ARUN, "RESHMI", 2/996,
   REPUBLIC ROAD, ERANJIPPALAM,
   KOZHIKODE - 673 006.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.S.LAKSHMI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   THE CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
   HEALTH AND FAMILY WELFARE,
   (SPECIAL DEPARTMENT), SECRETARIAT,
   THIRUVANANTHAPURAM.

3. DIRECTOR OF MEDICAL EDUCATION,
   THIRUVANANTHAPURAM.

4. COMMISSIONER OF ENTRANCE EXAMINATIONS,
   THIRUVANANTHAPURAM.

5. MEDICAL COUNCIL OF INDIA,
   NEW DELHI.

6. DENTAL COUNCIL OF INDIA,
   NEW DELHI.

7. KERALA GOVERNMENT DENTAL COLLEGE
TEACHERS ASSOCIATION, BY ITS SECRETARY -
DR. BINDU R., DEPARTMENT OF ORAL AND
MAXILLOFACIAL SURGERY, GOVERNMENT DENTAL COLLEGE,
CALICUT.

8. KERALA HEALTH SERVICE DENTAL SURGEONS
ASSOCIATION, REPRESENTED BY ITS SECRETARY,
DR. KRISHNA KUMAR, DENTAL SURGEON,
TALUK HOSPITAL, ADOOR.

ADDL. RESPONDENTS:

9. DR.MADHAVADAS, "RAGASUDHA",
PERINGODE, PALAKKAD, NOW RESIDING AT
FLAT NO.4, VAMARAJ APARTMENTS,
LANE H, CHALAKUZHY ROAD, PATTOM,
TRIVANDRUM.

10. DR.DEEPTI PAUL,
MANDAPATHIL HOUSE,
VMB ROAD, PATHADIPALAM,
EDAPPALLY ROAD, KOCHI-24.

11. ARUN T.J.,
S/O.LAT M.THANKAMANI, "AISWARYA",
NELLIVILA, MANNAMCODE,
KUNNATHUKAL P.O., KARAKONAM.
TRIVANDRUM.

12. GULBAHAR ADIL, S/O.HAMIDULLAH,
H.NO.295, SECTOR 46/A, CHANDIGARH(U.T.),
NOW RESIDING IN ABILASH, 4/420, A.G.ROAD,
CALICUT-673 032.

13. DR.JAYALAKSHMI.P.S.,
W/O.DR.DELEEP KUMAR.K.V., AGED 40 YEARS,
RESIDING IN DILRAJ, OLARIKKARA,
PULLAZHI.P.O., TRICHUR-12.

R1 TO 4 BY G.P. SRI.HOOD
R5 BY ADV. SRI.ALEXANDER THOMAS, SC, MCI
R6 BY ADV. SRI.BINOY VASUDEVAN, SC, DCI
R8 BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN
R7 BY ADV. SRI.V.GIRI
SRI.A.RASHID
R9&10 BY ADV. SRI.K.RAMAKUMAR
R11&12 BY ADV. SMT.S.AMINA
R13 BY ADV. SRI.SHANKAR V.

(ADDL.RESPONDENTS 9 & 10 ARE IMPLEADED AS PER ORDER IN I.A. NO.3259/2007, 11&12 ARE IMPLEADED AS PER ORDER IN I.A. NO.3380/2007 & 13 IS IMPLEADED ASPER ORDER IN I.A. NO.5179/2007 DT.4.4.2007.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/04/2007, ALONG WITH WPC NO. 2563 OF 2007, WPC NO. 4772 OF 2007 & WPC 11969/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 3176/2007)

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF JUDGMENT IN WPC NO.40026/2003 DT.23.1.2004.

P1(a): .DO. NO.3847/2004 DT.3.2.2004.

P2: TRUEC OPY OF PROSPECTUS FOR ADMISSION TO DENTAL PG COURSE 2005 DT.17.1.2005.

P3: .DO. 2006 DT.14.12.2005.

P4: .DO. 2007 DT.5.1.2007.

RESPONDENTS' EXHIBITS:

R7(a): TRUE COPY OF EXTRACT OF THE REGULATIONS FRMAED BY DENTAL COUNCIL OF INDIA.

R7(b): TRUE COPY OF GOVT. ORDER DT.31.12.2006.

R7(c): TRUE COPY OF G.O. DT.5.1.2007.

R8(a): TRUE COPY OF THE FRESH NOTIFICATION DT.7.2.2007 ISSUED BY R4 IS NOTICED IN THE INTERNET.

TRUE COPY

P.A. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.3176, 2563, 4772 & 11969 of 2007

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Dated this the 4th day of April, 2007.

JUDGMENT

The connected writ petitions are filed by some of the applicants for admission to various Post Graduate Dental courses in the State for the academic year 2007-2008. While petitioners in W.P. 3176/2007 are candidates for admission in the open quota, petitioners in all the three other cases are from service quota claiming admission to seats reserved for service quota. Admissions to Post Graduate Dental courses from service quota were made without conducting entrance examination until the academic year 2005-2006. However, this court vide judgment in W.P. 3847/2004 produced as Ext.P1(a) in W.P. 3176/2007, following the judgment of the Supreme Court observed that entrance examination is required for selection of inservice candidates also for admission to Post Graduate Dental courses. Obviously following this judgment admissions were made for Post Graduate Dental courses after conducting entrance examination for inservice candidates also for 2005 and 2006 based on Exts.P2 and P3 Prospectus produced in W.P. 3176/2007. It is seen from the said prospectus that minimum eligibility for admission for all candidates

including inservice candidates is 50% marks in the entrance examination. Relaxation is made only for SC/ST candidates. However, deviating from the two preceding years' practice, respondents have published Ext.P4 prospectus (produced in W.P. 3176/2007) dispensing with entrance test and providing for admission to candidates from service quota based on seniority in service. It is this prospectus that is under challenge and the prayer of the petitioners in W.P. 3176/2007 is for direction for selection of inservice candidates also based on entrance examination thereby disqualifying inservice candidates who do not secure minimum marks. Even though W.P. 2563/2007 is filed by a candidate from service quota, she is also pressing for same relief as in W.P. 3176/2007 i.e. for a declaration that Post Graduate admissions for service candidates also should be based on entrance examination. W.P. 4772/2007 is filed by a candidate from the service quota challenging Ext.P6 produced in the said W.P. by which Commissioner of Entrance Examination has notified entrance examination for inservice candidates for admission to Post Graduate Dental course for the year 2007-2008 pursuant to interim order of this court in W.P. 3176/2007 dated 30.1.2007. The case of the petitioner in W.P. 4772/2007 is that admission for the current year should be based on the prospectus published by the Directorate of Medical Education which provides for admission to inservice candidates based on seniority in service in the speciality. W.P. 11969/2007, though filed by a candidate from service

quota, the petitioner therein supports the case of the petitioners in W.P. 3176/2007 i.e. for admission to inservice candidates also based on entrance examination. In fact, in the entrance examination conducted for inservice candidates pursuant to the notification issued by the Commissioner of Entrance Examination, the said petitioner participated but she failed.

2. I heard counsel appearing for petitioners, contesting respondents and also the Government Pleader. The first question to be considered is whether the prospectus published for admission produced as Ext.P4 in W.P. 3176/2007 dispensing with entrance examination for inservice candidates for admission to Post Graduate Dental course in deviation from the practice of the two preceding years is arbitrary and illegal as claimed by petitioners in that W.P. and petitioners in W.Ps. 2563 & 11969/2007. It is conceded that Exts.P2 and P3 produced in W.P. 3176/2007 were the prospectus for admission to Post Graduate Dental course for the immediately two preceding years i.e. 2005 and 2006 which specifically provide for admission to inservice candidates also based on entrance examination. Even though the Government Pleader and the petitioner in W.P. 4772/2007 contended that the entrance examination introduced for inservice canidates for these two years was under a mistake, I am unable to accept the said contention. In fact, the position is well settled through several decisions of the Supreme Court, particularly in the case of STATE OF MADHYA PRADESH V. GOPAL D. TIRTHANI (AIR 2003 SC 2952) where the Supreme Court has

held that it is unsafe to rely on degree examination results when students for Post Graduate admissions are drawn from different Universities because the academic standards at graduate level will not be the same for all. The Supreme Court accordingly upheld the Medical Council Regulation providing for minimum marks of 50% in entrance examination for Post Graduate medical admissions. In fact keeping in mind this decision of the Supreme Court this court rendered Ext.P1(a) judgment (produced in W.P. 3176/2007) wherein it was specifically mentioned that even for inservice candidates minimum qualification cannot be dispensed with and entrance examination will be the means to achieve it. Obviously prospectus for admission to Post Graduate Dental courses for the two subsequent academic years were prepared based on the several decisions of the Supreme Court and particularly that of this court abovereferred and I find no justification for the respondents to deviate from the same for the year 2007-2008. Even though the Government Pleader and counsel for the petitioner in W.P. 4772/2007 pointed out that Dental Council Regulations do not provide for entrance examination for admission to MDS course, I do not think holding of entrance examination for admission to Post Graduate course even for inservice candidates based on decisions of the Supreme Court and of this court goes against the Dental Council Regulations. Criteria for admission for MDS course under the Dental Council Regulation is academic merit at BDS level. The Supreme Court in Tirthani's case abovereferred took the

view that when University standards are varying, it is unsafe to rely on graduate examination results for admission to Post Graduate courses. BDS course is conduced by several Universities in Kerala itself and therefore, in order to achieve uniform standard for selection, entrance examination is the only solution and it makes no difference whether the candidates are from open quota or from service quota. It was held by the Supreme Court in DR.PREETHI SRIVASTAVA V. STATE OF MADHYA PRADESH(1999 (7) SCC 120) that there is no justification to dispense with minimum qualification for admission to Post Graduate courses. In the circumstances, I am of the view that the entrance examination provided for inservice candidates for admission to Post Graduate Dental Courses was the right decision taken by the respondents for admissions 2005 and 2006 and there was no justification to deviate from the same for the current academic year. Therefore, in principle, the challenge against Ext.P4 in W.P.(C) NO.3176/2007 is upheld.

3. The next question to be considered is whether selection based on entrance examination should be insisted for inservice candidates for admission to Post Graduate Dental course for the current academic year i.e. 2007-2008. Even though W.P. 3176 & 2563/2007 were filed in time, the interim order passed by this court was not to the effect that entrance examination should be held for inservice candidates for admission to Post Graduate Dental course for current year. In fact, the examination was held

by the Commissioner of Entrance Examination assuming that this court through interim order expected to hold the entrance examination for inservice candidates also. It is seen that the Commissioner of Entrance Examination conducted the examination for inservice candidates without altering the prospectus and without giving proper publicity or time for all the candidates to prepare and write the examination. It is to be noted that prospectus was not amended and this court also did not issue any specific direction to hold entrance examination for inservice candidates. This obviously disabled many inservice candidates from appearing for the entrance examination as they were waiting for admission based on prospectus which was not stayed by this court during the pendency of W.Ps. Therefore, the only course is to order fresh entrance examination for inservice candidates, which will cause inordinate delay for commencement of PG courses for the current academic year. So far as individual grievance of the petitioners are concerned, I find the candidate from service quota who filed W.P. 2563/2007 though wrote the entrance examination, did not qualify. Therefore,she cannot have any grievance in the admission being given to inservice candidates based on seniority. Even though petitioner in W.P. 11969/2007 is also a candidate from the service quota who wrote the entrance examination and is said to have qualified, she is a late comer to this court as the W.P. was filed only yesterday and is coming up for admission today. Counsel for the petitioner

in W.P. 4772/2007 produced a consent letter from petitioner in W.P. 11969/2007 wherein she has expressed her no objection for giving admission to seniors in service based on prospectus. So far as the petitioners in W.P. 3176/2007 are concerned, they will have any benefit only if in the entrance examination candidates from service quota do not qualify by securing the minimum marks for admission, leading to dereservation of seats reserved for them to merit quota as held by Supreme Court in DR.SADHNA DEVI V. STATE OF UTTAR PRADESH (1997) 3 SCC 90. Since entrance examination was neither provided under Ext.P4 prospectus nor ordered by this court for service candidates, the petitioners in W.P. 3176/2007 cannot have a case that seats reserved for service quota candidates to be filled up based on seniority will be available to them. In the circumstances and to avoid delay in commencement of current year's PG courses, I feel admission of service candidates can be made in terms of Ext.P4 prospectus produced in W.P. 3176/2007. The Writ Petitions are accordingly disposed of with the following directions:

1) The Director of Medical Education is directed to make selection of service candidates also for admission to Post Graduate Dental courses from next academic year onwards by conducting entrance examination as was done during the academic years 2005 and 2006.

2) For the current academic year, admission to Post Graduate Dental course can be made based on prospectus issued which is produced as Ext.P4

in W.P. 3176/2007. However, reservation to inservice candidates shall not exceed one third of the total seats and reservation should be provided subject-wise. In other words, two out of every three seats in each subject should be allotted to candidates from open merit quota and allotment under reservation quota should be made to inservice candidates only in subjects where there are minimum three seats.

3. The entrance examination conducted by the Commissioner of Entrance Examination apparently under interim orders of this court, will stand cancelled.

C.N.RAMACHANDRAN NAIR
Judge

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